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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 72-397

BONELLI CATTLE COMPANY, *et al.*, *Petitioners*,

v.

STATE OF ARIZONA, *et al.*, *Respondents*.

On Writ of Certiorari to the Supreme Court of the State of Arizona

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE OUT OF TIME AND BRIEF OF AMICUS CURIAE, COCOPAH TRIBE OF INDIANS

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October, 1973

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE OUT OF TIME

The Cocopah Tribe of Indians respectfully moves for leave to file out of time the attached brief amicus curiae.

Amicus is a small American Indian tribe, located along the Colorado River in the extreme southwestern corner of the State of Arizona. The Tribe had no knowledge of the pendency of this case until the middle of September, 1973. The Cocopah Tribe is without regular, retained counsel. Counsel here, who serve without fee, agreed to file a brief amicus curiae on September 24, 1973. Upon receipt of the authorization to proceed with the preparations of the brief amicus curiae, counsel then learned that oral argument had been set for October 15, 1973. Amicus realizes that the

Motion for Leave to File Brief Amicus Curiae is untimely. The consents of the petitioners and respondents to the filing of the brief have not been sought because of the late date. Nevertheless, because the question of title to accreted lands is vital to amicus, and because the delay in filing could not have reasonably been avoided, amicus urges the Court to accept out of time the very short brief amicus curiae.

The interest of the Cocopah Tribe of Indians arises from the fact that the Tribe owns accreted lands in the State of Arizona which were created as the bed of the Colorado River shifted. To the extent that this Court's decision affects title to accreted lands in Arizona, it will affect the rights of the amicus Tribe and other tribes along the Colorado River, including those residing on the Fort Mohave Reservation, the Fort Yuma Reservation, and the Colorado River Reservation. The Tribe's very survival depends on the Tribe's land base, much of which is comprised of accreted land. The Tribe believes it is essential to advise the Court that any decision relating to a dispute between non-Indian landowners and the State of Arizona over accreted lands should not affect Indian rights to accreted lands.

Respectfully submitted,

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BRIEF OF AMICUS CURIAE. COCOPAH TRIBE OF INDIANS

INTEREST OF AMICUS CURIAE

The interest of amicus, the Cocopah Tribe of Indians, is set forth in the accompanying Motion for Leave to File Out of Time.

ARGUMENT

The Cocopah Tribe resides on the Cocopah Indian Reservation, which was created in 1917 by Executive Order of the President, No. 2711, September 27, 1917. Title to the reservation lands is held by the United

States, as trustee for the Cocopah Indians. The Cocopah Tribe's rights in tribal land are specifically protected by statute:

> Changes in the boundaries of reservations created by Executive Order, proclamation, or otherwise for the use and occupation of Indians shall not be made except by Act of Congress: *Provided,* That this shall not apply to temporary withdrawals by the Secretary of the Interior. (25 U.S.C. §398d, 44 Stat. 1347.)[1]

Thus, unlike petitioners here, amicus holds a federal title protected by federal statute. It is a well established rule of law that the United States cannot lose title to lands by estoppel, laches, mistakes, adverse possession or acquiescence. *See, e.g., United States* v. *Claridge,* 279 Fed. Supp. 87, 91 (D. Ariz. 1966), *aff'd,* 416 F.2d 933 (9th Cir. 1969), *cert. denied,* 397 U.S. 961 (1969), where this rule was used against a private claimant in the State of Arizona, who claimed lands which had accreted and relicted to land owned by the United States. The Court in *Claridge* held that the United States as a riparian landowner owned accreted land to the ordinary high water mark of the Colorado River within the existing banks of the River, regardless of the fact that the riverbed had been shifted by channelization.

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[1] The same protection extended to Executive Order reservations has been extended to treaty reservations by judicial rule. This Court in *Choctaw Nation* v. *Oklahoma,* 399 U.S. 620, 631 (1970), said:

> This Court has often held that treaties with the Indians must be interpreted as they would have understood them . . . and any doubtful expression in them should be resolved in the Indians' favor. (citations omitted.)

Amicus realizes that any case involving ownership of accretions to federally-owned land or to land where title was derived from the federal government must be determined by federal law. *Hughes* v. *Washington,* 389 U.S. 290, 291 (1967), and *United States* v. *Washington,* 294 F.2d 830, 833 (9th Cir. 1961), *cert. denied,* 369 U.S. 817 (1962). However, unless this Court's decision here is specifically limited to non-Indian lands, doubt may be cast upon the title and claims of amicus, and other tribes, to accreted and relicted lands.

If the Court holds for the State of Arizona, the State will own a strip of land along the River to the exclusion of the riparian owners, which might arguably include the Cocopah Tribe. The Cocopah Tribe urges the Court to follow the common law rule of accretion and acknowledge the State's ownership of the riverbed and the riparian owners' rights to accreted or relicted land. Should the Court hold for the State of Arizona, amicus urges that its holding be limited expressly to Arizona's claims to accretions and relictions to other than Indian lands.

Respectfully submitted,

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